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16 HORTA, LLC

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 HORTA, LLC,

21 Plaintiff,

22 v.

23 CITY OF SAN JOSE,

24 Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case Nos. C 00-20018 JF  
and C 05-03778 JF]

STIPULATION AND [PROPOSED] ORDER  
CONTINUING AUGUST 4, 2006 HEARING ON  
HORTA, LLC'S MOTION TO RECONSIDER,  
REOPEN, AND AMEND JUDGMENT

[Civil Local Rule 6-2]

Judge: Hon. Jeremy Fogel  
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC (“Horta”) filed its Motion to Reconsider, Reopen, and Amend Judgment (the “Motion to Amend”) and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on non-party Federal Aviation Administration (“FAA”), in the form of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend;

WHEREAS, on July 7, 2005, Horta and the City stipulated to continuing the August 5, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on July 13, 2005, the Court continued the hearing on the Motion to Compel to November 4, 2005;

WHEREAS, on September 20, 2005 and October 14, 2005, the FAA filed motions to quash Horta’s subpoenas for documents and deposition testimony;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery from the FAA in the related case *Horta, LLC v. Federal Aviation Administration*, United States District Court, Northern District of California, Case No. C 05-03778 HRL (the “*FAA Action*”);

WHEREAS, on September 30, 2005, Horta and the City stipulated to continuing the November 4, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on October 5, 2005, the Court continued the hearing on the Motion to Amend to February 3, 2006;

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta’s discovery requests and to provide the requested deposition testimony;

1 WHEREAS, the Court took the FAA's motions to quash and Horta's motion for summary  
2 judgment under submission at the close of the December 16, 2005 combined hearing on the  
3 motions and has not yet ruled on them;

4 WHEREAS, on January 26, 2006, Horta and the City stipulated to continuing the  
5 February 3, 2006 hearing on the Motion to Amend at least ninety (90) days;

6 WHEREAS, on January 30, 2006, the Court continued the hearing on the Motion to  
7 Amend to May 5, 2006;

8 WHEREAS, on March 30, 2006, Horta and the City stipulated to continuing the February  
9 3, 2006 hearing on the Motion to Amend at least ninety (90) days;

10 WHEREAS, on April 4, 2006, the Court continued the hearing on the Motion to Amend to  
11 August 4, 2006;

12 WHEREAS, pursuant to the February 7, 2006 Order in the *FAA Action*, the Court will not  
13 issue its ruling on the FAA's motions to quash and Horta's motion for summary judgment unless  
14 and until the Court is informed that discussions between Horta and the FAA regarding a potential  
15 resolution have failed to resolve the issues presented by those motions;

16 WHEREAS, if the discussions between Horta and the FAA fail to resolve the issues  
17 presented by Horta's motion for summary judgment and the FAA's motions to quash, Horta  
18 contends that it requires additional time to complete discovery pertaining to the issues raised in  
19 the Motion to Amend;

20 WHEREAS, Horta and the FAA have engaged in discussions, and expect that their  
21 discussions will be complete within the next 60 days; and

22 WHEREAS, Horta and the City of San Jose (the "City") agree that the August 4, 2006  
23 hearing on the Motion to Amend should be continued for at least sixty (60) days;

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By /s/  
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Attorneys for Plaintiff HORTA, LLC

By Nora Frimann  
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JOSEPH P. DICIUCCIO  
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Attorneys for Defendant CITY OF SAN JOSE

PURSUANT TO STIPULATION, IT IS SO ORDERED. The hearing on Horta's Motion to Reconsider, Reopen, and Amend Judgment is further continued from August 4, 2006 to October 6, 2006, at 9:00 a.m., in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose, California.

  
JEREMY FOGEL  
UNITED STATES DISTRICT COURT JUDGE